

Stuart E. Vaughn
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0100412004

October 21, 1994

RECORDATION NO. FILED 1425

OCT 25 1994 - 10 15 AM

INTERSTATE COMMERCE COMMISSION

Mr. Vernon A. Williams
Acting Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue N.W.
Washington, D.C. 20423

Re: Secondary Document For Filing Under Recordation No. 11612

Dear Mr. Williams:

I have enclosed an original, and one counterpart and two additional copies of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Locomotive Lease and Option to Purchase Agreement, a secondary document, dated as of October 14, 1994. The primary document to which this is connected is recorded under Recordation No. 11612 (the primary document is the Conditional Sale Agreement dated as of March 1, 1980 between The Atchison, Topeka and Santa Fe Railway Company and numerous builders as Vendors, with Harris Trust and Savings Bank, as Agent).

The names and addresses of the parties to the document are as follows:

Lessor: The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173
Attn: Vice President-Finance

Lessee: Burlington Northern Railroad Company
1600 Continental Plaza
777 Main Street
Fort Worth, Texas 76102
Attn: Vice President Network Design

The equipment covered by the Locomotive Lease and Option to Purchase Agreement is described on Appendix 1 attached thereto.

A check in the amount of \$18.00 is enclosed in payment of the Interstate Commerce Commission's prescribed recordation fee.

RECEIVED
OFFICE OF THE
SECRETARY
OCT 25 10 09 AM '94
LICENSING BRANCH

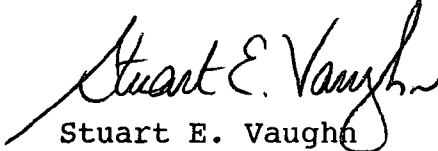
Mr. Vernon A. Williams
October 21, 1994
Page 2

Please return the original and any extra copies not needed by the Interstate Commerce Commission for recordation to me at the address set forth at the top of the first page of this letter. I would appreciate having the recordation information placed on such extra copies.

A short summary of the document to appear in the index follows:

A Locomotive Lease and Option to Purchase Agreement was entered into as of October 14, 1994, between The Atchison, Topeka and Santa Fe Railway Company and Burlington Northern Railroad Company for the lease to and, at the option of BN, purchase by, BN of ten locomotives (Road Nos. 8099, 8100, 8101, 8103, 8105, 8110, 8114, 8118, 8120 and 8122) currently subject to the ATSF Conditional Sale Agreement dated as of March 1, 1980. The Lease Agreement terminates October 2, 1995.

Very truly yours,



Stuart E. Vaughn

Enclosures

cc: Mr. Craig N. Smetko
General Attorney
The Atchison, Topeka and Santa Fe
Railway Company

Mr. L. Steven Vollmer
Assistant Vice President-Finance
The Atchison, Topeka and Santa Fe
Railway Company

Stuart E. Vaughn
Attorney at Law
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San Francisco, California 94116
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Fax: (415) 661-6848

RECEIVED
OCT 25 1994 10 15 AM
FBI

October 24, 1994

Mr. Vernon A. Williams
Acting Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue N.W.
Washington, D.C. 20423

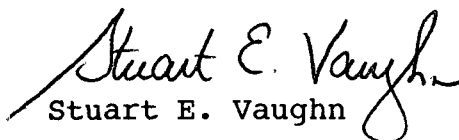
Re: Secondary Document For Filing Under Recordation No. 11612

Dear Mr. Williams:

By letter dated October 21, 1994, I sent an original, and one counterpart and two additional copies of a Locomotive Lease and Option to Purchase Agreement dated as of October 14, 1994, a secondary document, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. The primary document is the Conditional Sale Agreement dated as of March 1, 1980 between The Atchison, Topeka and Santa Fe Railway Company and numerous builders, as Vendors, with Harris Trust and Savings Bank, as Agent, as recorded under Recordation No. 11612.

A check in the amount of \$18.00 was enclosed as payment of the ICC's recordation fee. As I now understand that the recordation fee is \$21.00, there is enclosed herewith a check in the amount of \$3.00 to make up the difference.

Very truly yours,


Stuart E. Vaughn

Enclosure

cc: Mr. Craig N. Smetko
General Attorney
The Atchison, Topeka and Santa Fe
Railway Company

Mr. L. Steven Vollmer
Assistant Vice President-Finance
The Atchison, Topeka and Santa Fe
Railway Company

Interstate Commerce Commission

Washington, D.C. 20423

10/25/94

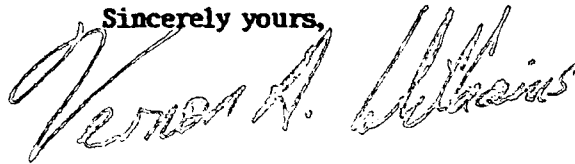
OFFICE OF THE SECRETARY

Stuart E. Vaughn
2048 14th Avenue
San Francisco, California 94116

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/25/94 at 10:15AM, and assigned recordation number(s). 11612-C.

Sincerely yours,



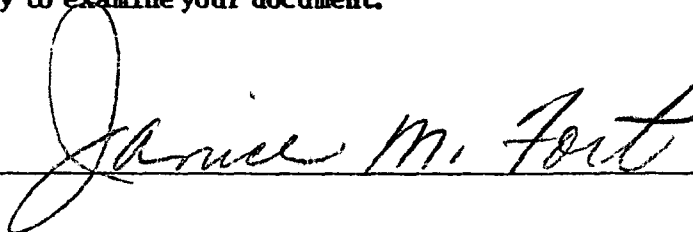
Vernon A. Williams
Acting Secretary

Enclosure(s)

(0100412004)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



11612-c
OCT 25 1994 5:15 AM

LOCOMOTIVE LEASE AND OPTION TO PURCHASE AGREEMENT

This Locomotive Lease and Option to Purchase Agreement (the "Lease") is made this 14th day of October, 1994, between The Atchison, Topeka and Santa Fe Railway Company, a Delaware corporation (hereinafter "Lessor") and Burlington Northern Railroad Company, a Delaware corporation (hereinafter "Lessee").

WHEREAS, Lessor desires to lease certain locomotives (the "Locomotives") described in Appendix 1, which is attached hereto and made a part of this Lease, to Lessee and Lessee desires to lease such Locomotives from Lessor;

WHEREAS, the Locomotives are subject to a Conditional Sale Agreement dated as of March 1, 1980 (the "CSA") under which Harris Trust and Savings Bank acts as agent (the "Agent");

WHEREAS, this Lease of Locomotives shall at all times be subordinate to the CSA and the rights of the Agent; and

WHEREAS, Lessee desires to have an option to purchase the Locomotives upon the expiration of the CSA and Lessor is willing to grant to Lessee such an option.

NOW, THEREFORE, for and in consideration of the initial covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Equipment.

Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use, under the terms and conditions set forth herein, the Locomotives described in Appendix 1 hereto.

2. Delivery.

2.1 Five of the Locomotives shall be delivered to the Lessee at the Lessor/Lessee interchange in Kansas City, Kansas and the other five Locomotives shall be delivered to Lessee at the Lessor/Lessee interchange at Denver, Colorado. The provision of transportation services in connection with the delivery of the Locomotives beyond said interchange points shall be the responsibility of Lessee.

2.2 Lessor shall not be liable for delays or failure to deliver the Locomotives due to (a) causes beyond its control or (b) acts of God, acts of the Lessee, acts of civil or military authority, governmental priorities, fires, floods, epidemics, war, riots or delays in transportation. In the event of any such delay, the

date of delivery shall be extended for a period equal to the time lost by reason of the delay.

3. Receipt, Inspection and Acceptance.

3.1 Within five (5) days after the delivery of the last Locomotive under the Lease, an authorized representative of Lessee shall execute for all of the Locomotives a Certificate of Acceptance substantially in the form set forth in Appendix 2, which is attached hereto and made a part of this Lease, and deliver such Certificate of Acceptance to Lessor.

3.2 Lessee acknowledges that it has inspected the Locomotives and is aware of the condition that the Locomotives were in as of the date of such inspection. Subject to Lessor's limited warranty set forth in Paragraph 6.3 hereof, Lessee shall accept the Locomotives when they are delivered to the interchange points identified in Paragraph 2.2 above.

3.3 During the term of the Lease, the Locomotives will be available at all reasonable times for Lessor's inspection and for the inspection of the Agent under the CSA, but neither Lessor nor Agent is under any obligation to inspect such Locomotives.

4. Term.

4.1 The Lease shall commence for each Locomotive on the date such Locomotive is delivered to Lessee pursuant to the terms of Section 2 of this Lease, provided that Lessor shall have delivered to Lessee all of the Locomotives subject to this Lease on or before November 1, 1994. The Lease shall continue in effect until October 2, 1995 (the "Term") at which time it shall terminate.

4.2 It is understood by the parties hereto that any termination of the Lease will not relieve either of the parties of any obligations arising prior to or upon such termination, including, but not limited to, the obligations of Lessee under Sections 9, 10, 11 and 13, and any obligation to pay rent or other sums due and owing to Lessor at the time of any such termination or as a result of any such termination.

4.3 Upon the termination of this Lease with respect to each Locomotive, and provided that Lessee has not exercised its option to purchase the Locomotives pursuant to Section 17 of this Lease, such Locomotive shall be returned to Lessor within thirty (30) days unless

otherwise agreed, during which time the rental charges and all other obligations under this Lease shall remain in effect until acceptance of such Locomotive by Lessor at the Lessor/Lessee Kansas City interchange point. Each Locomotive returned to Lessor hereunder shall be in an equal or better condition than the condition of such Locomotive when first delivered to Lessee, shall be painted in Lessor's colors with Lessor's markings or, if such Locomotive is returned without such color scheme and markings, Lessee shall reimburse Lessor for its cost to repaint and remark such Locomotive.

5. Rental.

- 5.1 During the Term of this Lease, Lessee agrees to pay to Lessor, as rent for each of the Locomotives, the sum of Fifty Dollars (\$50.00) per day during the first twenty-one (21) days that such Locomotive is subject to this Lease and, thereafter, the sum of One Hundred Dollars (\$100.00) per day.
- 5.2 All rental payments hereunder shall be paid monthly in arrears on an actual day basis and shall be due no later than the first day of the immediately following month (the "Payment Date"). Payments of rental charges not received within five (5) days of the Payment Date shall accrue interest as provided in Paragraph 5.3. All other payments due under this Lease shall be made within thirty (30) days of invoicing. Unless otherwise agreed by the parties, payments shall be made by wire transfer to such bank or other account in the continental United States as Lessor shall designate.
- 5.3 Anything to the contrary notwithstanding, it is agreed that if rental charges remain unpaid five (5) days after the Payment Date or any other amounts remain unpaid after the same shall have become due and payable pursuant to the terms of this Lease, the Lessee shall pay interest at an annual rate at the then current prime rate of interest charged by Citibank N.A. plus two and one-half percent (2.5%) (or the lawful rate, whichever is less) on overdue rental from the Payment Date and on other overdue amounts for the period of time which they are overdue; it being expressly understood that this provision shall be in addition to (and not in derogation of) any other rights which Lessor may have under this Lease in the event Lessee fails to make all payments when due and payable.

6. Alterations, Maintenance and Repair.

6.1 Except for alterations or changes required by law or regulatory authorities and repairs which Lessee intends to perform on the Locomotives, the Lessee shall not effect any change in the design, construction or specifications of the Locomotives, body or electrical equipment, or components thereof, without the prior written approval of the Lessor, which approval shall not be unreasonably withheld.

6.2 Lessee shall, during the Term of this Lease, keep the Locomotives in an equal or better condition than the condition of such Locomotives when first delivered to Lessee applying the manufacturer's recommended normal maintenance standards and procedures.

6.3 LIMITED WARRANTY OF LESSOR. THE LOCOMOTIVES LEASED UNDER THIS LEASE ARE TO BE ACCEPTED BY LESSEE IN AN AS IS CONDITION, PROVIDED THAT LESSOR WARRANTS TO LESSEE THAT THE LOCOMOTIVES ARE IN NO WORSE CONDITION THAN THE CONDITION EXISTING AT THE TIME THEY WERE INSPECTED BY PERSONNEL OF LESSEE PRIOR TO THE COMMENCEMENT OF THIS LEASE. EXCEPT FOR THAT LIMITED WARRANTY, LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS WHATSOEVER AS TO THE LOCOMOTIVES' FREEDOM FROM DEFECTS IN MATERIAL, WORKMANSHIP OR MAINTENANCE, OR THEIR MERCHANTABILITY, CONDITION OR FITNESS FOR ANY PARTICULAR PURPOSE.

7. Use and Operation.

7.1 The Lessee agrees to comply in all respects with all laws of the jurisdictions in which its operations involving the Locomotives may extend and with all lawful rules of the Interstate Commerce Commission (the "ICC") and any other legislation, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives, to the extent that such laws and rules affect the operation or use of the Locomotives. In the event such laws or rules require an alteration to the Locomotives, the Lessee will conform therewith at its expense. After any such required alterations, Lessee shall maintain the same in proper condition for operation under such laws and rules, provided, however, that the Lessee may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of Lessor, adversely affect the property or right of the Lessor or Agent as owner hereunder or under the CSA, respectively.

- 7.2 Lessee shall use and operate the Locomotives in conformance with all applicable manufacturer recommendations.
- 7.3 Lessee shall maintain records as to the use, operation, movement and maintenance of the Locomotives, and such records will be made available for Lessor's inspection at reasonable times and upon reasonable notice to Lessee.
- 7.4 Lessee agrees to use the Locomotives within the boundaries of the continental United States and shall not assign the Locomotives for use or service outside of the continental United States.
- 7.5 After delivery of each Locomotive under Section 3, charges levied by any party for use of its right-of-way, track, storage or hauling with respect to such Locomotive are the responsibility of Lessee.

8. Taxes and Liens.

- 8.1 Lessee agrees to assume responsibility for, to pay, and to indemnify and hold harmless Lessor from and against all applicable taxes, levies, assessments, and other governmental charges or withholdings of any nature levied or assessed by any federal or state governmental taxing authority upon or with respect to the Locomotives, or the use of the Locomotives under the terms hereof, and which are payable solely and directly on account of the leasing of the Locomotives by Lessee, including, but not limited to, any ad valorem taxes, license or registration fees, and sales taxes, provided, however, that Lessee shall not be responsible for (1) any tax on, based on, measured by, or with respect to net or gross income, capital, franchises, excess profits or conduct of business of Lessor, and (2) any sales, use or other taxes or charges levied or assessed directly or indirectly in connection with Lessor's acquisition of the Locomotives (whether such acquisition is by sale or lease), or the use, consumption, manufacture, disposition, substitution or storage of the Locomotives. Lessee will be under no obligation to pay any such taxes or other charges so long as Lessee in good faith and by appropriate legal or administrative proceedings contests the validity or amount thereof or directs Lessor to contest the validity or amount thereof, which contest Lessor so agrees to undertake at Lessee's cost, and the nonpayment thereof does not adversely affect the title, property or rights of Lessor in or to any Locomotive. Lessee will not be responsible for any such amounts, and

any interest or penalties thereon, if they are imposed as a result, directly or indirectly, of Lessor's act or failure to act or misrepresentation or omission. To the extent that it is legally permissible, Lessee shall timely prepare and file all reports and returns which are requested to be made with respect to any obligation of Lessee arising out of this Paragraph 8.1.

- 8.2 Lessee shall pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, obligation or claim against Lessee which, if unpaid, might become a lien or charge upon or against the title of Lessor to the Locomotives or which might have the effect of altering in any way the rights of the Lessor or Agent in such Locomotives under this Lease; but the Lessee shall not be required to pay or discharge any such debt, obligation or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings, unless such contest will, in the reasonable judgment of Lessor, materially endanger the rights or interests of Lessor or Agent.

9. Loss and Damage.

- 9.1 Lessee shall bear the entire risk of loss, theft or damage to any Locomotive from the date of delivery through termination of the Lease with respect to such Locomotive in accordance with the provisions of Section 4, regardless of the cause of such loss or damage, except to the extent such loss or damage is caused directly by the gross negligence or willful misconduct of Lessor or its employees.
- 9.2 Lessee shall notify Lessor promptly of any accident, collision, loss, theft or damage involving any Locomotive to be followed promptly by a detailed written report to Lessor. Lessee shall provide all assistance reasonably required by Lessor in the investigation, defense or prosecution of any resulting claims or suits.
- 9.3 In the event a Locomotive is lost, stolen or damaged beyond economic repair, Lessee shall so notify Lessor within fifteen (15) days and within thirty (30) days thereafter pay Lessor the Casualty Value of such Locomotive. As used herein, the term "Casualty Value" shall mean Sixty Thousand Dollars (\$60,000.00) per Locomotive through and including April 1, 1995 and Fifty-Seven Thousand Dollars (\$57,000.00) per Locomotive thereafter. At the same time that the Casualty Value

payment is made to Lessor, Lessee shall also pay to Lessor the daily rental charges for such Locomotive through the date of payment of the Casualty Value. The parties shall share in the salvage of the Locomotive to the extent of their relative payments for the casualty.

- 9.4 In the event a Locomotive is partly damaged or destroyed, the Lessee shall elect within fifteen (15) days of such occurrence, after consultation with Lessor, whether to repair the Locomotive or consider such Locomotive to be damaged beyond economic repair. If the Lessee elects to repair the Locomotive, it shall do so, or cause such repairs to be done, at its own expense except to the extent such damage is caused directly by the gross negligence or willful misconduct of Lessor or its employees.

10. Insurance.

- 10.1 Lessee shall at all times after delivery and acceptance of each Locomotive, at its own expense, carry and maintain or cause to be carried and maintained property insurance in respect of the Locomotives at the time subject hereto and public liability insurance with respect to third-party personal and property damage. Lessee shall continue to carry such insurance in each case with such deductibles, in such amounts and for such risks and with such insurance companies of recognized responsibility and subject to such self-insurance in each case as is consistent with prudent industry practice for railroads similar to Lessee, but in any event not less comprehensive in amounts and against risks customarily insured against by Lessee in respect of equipment owned or leased by it similar in nature to the Locomotives. Lessee warrants and affirms that it will satisfy all obligations under each policy necessary to keep such insurance in full force and effect.

- 10.2 Each insurance policy shall name and insure Lessor and Agent as additional insureds under the comprehensive public liability insurance and under the property insurance with respect to the Locomotives.

11. Indemnity.

Lessee hereby agrees to indemnify, reimburse and hold Lessor and any assignee or successor in title of Lessor harmless from any and all losses, damages, costs (including attorneys' fees), injuries, claims, demands, suits, judgments or causes of action whatsoever (hereinafter, collectively referred to as "Liabilities") arising on account of, or caused in any way

by, any of the Locomotives or the use or operation thereof after delivery thereof to Lessee up to the termination of this Lease with respect thereto and the return of such Locomotives to Lessor, except to the extent directly caused by the gross negligence or willful misconduct of Lessor or its employees. Lessee will notify Lessor promptly of any Liabilities and permit Lessor to appear in any proceedings to defend its interests as they may be.

12. Liability of Lessor and Lessee.

Whether liability arises under breach of contract, warranty, tort (including negligence) or otherwise, neither party's liability to the other party will include any special, incidental, indirect or consequential damages including, but not limited to, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs or claims of Lessee's customers for such damages; provided, however, in the event that any provisions pertaining to liability contained in run-through agreement(s) between Lessor and Lessee are inconsistent with the foregoing, the provisions contained in such run-through agreement(s) shall be applicable.

13. Title, Identification and Recording.

13.1 At all times during the continuance of this Lease, title to the Locomotives shall remain in the name of the Agent subject to the CSA or in the name of Lessor, as applicable, and delivery of the Locomotives to Lessee, its assigns or successors, and Lessee's possession of the Locomotives, shall constitute a lending or bailment for hire.

13.2 No right, title or interest in the Locomotives will vest in Lessee by reason of this Lease or by delivery to or use by Lessee of the Locomotives, except the right to use the Locomotives in accordance with the terms and conditions of this Lease and the right to purchase said Locomotives pursuant to the terms and conditions of Section 17.

13.3 Lessee shall take all actions in connection with matters that arise by, through or as a result of this Lease necessary to protect the rights, interest and title of Lessor and Agent in the Locomotives, and will take no action inconsistent with that obligation.

13.4 Lessee shall not place any markings on the Locomotives that might be interpreted as a claim of ownership by any person, association or corporation other than the

Agent or Lessor. No markings may be placed on the Locomotives without written consent of Lessor, which consent shall not be unreasonably withheld; but the Locomotives may be lettered with the names or initials or other insignia customarily used by Lessee on its equipment of the same or similar type for convenience of identification of the rights to use and operate the Locomotives under this Lease.

- 13.5 Prior to delivery of any Locomotive hereunder, Lessor, at its own expense, shall cause this Lease and any supplements hereto and any assignment and reassignment hereof to be filed with the ICC. Lessee shall do such acts in connection with matters that arise by, through or as a result of this Lease as may be required by federal law, state law or as reasonably requested by Lessor, for the proper protection of Lessor's and Agent's title and interest in the Locomotives.

14. Assignment.

- 14.1 Lessee shall not assign, transfer or encumber this Lease or any interest therein or any right granted hereunder without the prior written consent of Lessor or Agent, if applicable, and it is agreed that any such assignment, transfer or encumbrance, whether voluntary, by operation of law or otherwise, without such prior written consent, shall be void *ab initio* and shall, at the sole option of Lessor, terminate this Lease.
- 14.2 Lessor, upon prior written notice to Lessee, may assign this Lease and all or any rights, benefits and advantages hereunder, including, but not limited to, title to any Locomotive, to any of Lessor's direct or indirect subsidiaries or affiliates as Lessor may select in its sole discretion; provided, however, that Lessor shall remain primarily liable for all of its obligations hereunder regardless of any
- 14.3 Notwithstanding any other provision of this Lease, any assignment, transfer or sublease of this Lease shall not relieve Lessee of its obligations under this Lease (including any obligation to give notice to Lessor of any such assignment, transfer or sublease), shall be made subject to the consent of the Agent and shall require any assignee, transferee or sublessee to assume all of the obligations of this Lease and require such entity to take no action in connection with the obligations of the outstanding CSA to which the Locomotives are subject, and no action in connection with such assignment, transfer or sublease or activities

arising thereunder, that would permit any encumbrances or liens to arise on such Locomotives contrary to Lessor's CSA to which the Locomotives are subject. Lessee shall deliver to Lessor for forwarding to Agent a copy of any such assignment, transfer or sublease by Lessee promptly after its execution with confidential financial terms redacted.

15. Representations and Warranties.

15.1 Lessor represents and warrants that:

- (a) Lessor is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware; is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Lease; and has the power and authority to own its properties and carry on its business as now conducted.
- (b) The execution and delivery of this Lease is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and the Lease is a valid and binding obligation of the Lessor enforceable in accordance with its terms subject to applicable bankruptcy, insolvency or moratorium laws.
- (c) No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Lease or for the validity and enforceability thereof or the leasing of the Locomotives hereunder or for the rentals and the other terms and conditions provided for herein; or, if any such authorizations, approvals or exemptions are required, they have been obtained, and if any such shall hereafter be required, they will be obtained promptly.
- (d) No litigation or administrative proceedings are pending or the knowledge of Lessor, threatened against Lessor, the adverse determination of which would affect the ability of Lessor to perform its obligations under this Lease, the validity of this Lease or the rights of the Lessee hereunder.

15.2 Lessee represents and warrants that:

- (a) Lessee is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware; is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Lease; and has the power and authority to own its properties and carry on its business as now conducted.
- (b) The execution and delivery of this Lease is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and the Lease is a valid and binding obligation of the Lessee enforceable in accordance with its terms subject to applicable bankruptcy, insolvency or moratorium laws.
- (c) The rights of Lessor as herein set forth and the title of Lessor to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument binding upon Lessee.
- (d) No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Lease or for the validity and enforceability thereof or the leasing of the Locomotives hereunder or for the rentals and the other terms and conditions provided for herein; or, if any such authorizations, approvals or exemptions are required, they have been obtained, and if any such shall hereafter be required, they will be obtained promptly.
- (e) No litigation or administrative proceedings are pending or the knowledge of Lessee, threatened against Lessee, the adverse determination of which would affect the ability of Lessee to perform its obligations under this Lease, the validity of this Lease or the rights of the Lessor hereunder.

16. Default.

16.1 A. The occurrence of one or more of the following events shall be an Event of Default hereunder:

- (a) Lessee shall fail to pay when due any rental under the Lease within five (5) days after written notice

of failure to pay rental when due, or the Lessee shall fail to make any other payments due hereunder within thirty (30) days of invoicing therefore;

- (b) Lessee shall fail to observe or perform any covenant or agreement contained in Section 10;
- (c) Lessee shall fail to observe or perform any covenant or agreement contained in Paragraphs 6.1 or 6.2, Sections 7, 8, 9 or 11, Paragraphs 13.1, 13.3 or 13.4 or Section 14 (other than those covered by clause (a) or (b) above) for fourteen (14) days after receipt of written notice thereof has been given to Lessee by Lessor, provided however, that if the failure is of such nature as to require more than fourteen (14) days to cure, and Lessee commences such cure within said fourteen (14) day period and proceeds with due diligence and dispatch to effect such cure, Lessee will have an additional thirty (30) day period to cure such failure;
- (d) Any representation and warranty made by Lessee under this Lease shall prove to have been incorrect in any material respect when made;
- (e) Lessee shall make or suffer, voluntarily, by operation of law or otherwise, any unauthorized assignment, transfer or encumbrance of this Lease or any interest thereon or any right granted thereunder, and shall fail or refuse to cause such assignment, transfer or encumbrance to be cancelled by agreement of all parties having any interest therein; and
- (f) Any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions;

B. Upon the occurrence of an Event of Default hereunder, without limiting Lessor's rights and remedies otherwise provided by law, at law or in equity, which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor, and Lessor, in any case, being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its

option:

- (a) terminate this Lease and recover damages pursuant to the terms hereof and under applicable law;
- (b) proceed by any lawful means to enforce performance by Lessee of this Lease or to recover damages pursuant to the terms hereof and under applicable law for a breach hereof;
- (c) By notice to in writing to Lessee terminate Lessee's right to possession and use of some or all of the Locomotives, whereupon all right and interest of Lessee in such Locomotives shall terminate; thereupon, Lessor may enter upon any premises where the terminated Locomotives may be located and take possession of such Locomotives and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental which under the terms of this Lease may then be unpaid and due or which may have accrued to that date with respect to terminated Locomotives, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof; or
- (d) Without terminating this Lease, Lessor may repossess the Locomotives. Lessor may relet the same or any part thereof to others upon such terms as Lessor desires. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of the retaking and the reletting of the Locomotives and of their delivery to the new lessee(s), and then to the payment of rent and any other sums due hereunder through the terms of this Lease. Lessee shall pay any deficiency remaining due after the proceeds have been so applied. The election of Lessor to relet the Locomotives and the acceptance of the Locomotives by a new lessee shall not release Lessee from liability for any Event of Default arising prior to or relating to a period of time prior to the termination of this Lease, in connection with any other covenant or agreement herein contained.

The obligation to pay such deficiency or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Locomotive.

16.2 Lessee shall be entitled to quiet enjoyment of the Locomotives during the Term of this Lease, and in the event such quiet enjoyment is materially disturbed as a result of action by, through or as a result of actions of Lessor, such breach shall be considered as a default by Lessor, in which case Lessee shall have the right to terminate this Lease with respect to any affected Locomotive, return such Locomotive to Lessor with all improvements made by Lessee remaining in, on or attached to such Locomotive and recover from Lessor the reasonable costs of any such improvements made by Lessee to such affected Locomotive. Upon such return, Lessee shall have no further obligation with respect to such Locomotive other than those already arising under the Lease prior to termination. Such return and recovery of reasonable costs of improvements shall be the sole remedy available to Lessee for the results of Lessor's default.

17. Purchase Option.

17.1 Provided that (i) this Lease has not been earlier terminated and (ii) no Event of Default has occurred and is continuing under the Lease, Lessee shall have the option to purchase all, but not less than all, of the Locomotives from Lessor on October 2, 1995 at a purchase price equal to Forty-Three Thousand Five Hundred Dollars (\$43,500.00) for each Locomotive. Lessee shall exercise its option to purchase the Locomotives by giving written notice thereof to Lessor on or before September 1, 1995.

17.2 In the event that Lessee exercises its option to purchase the Locomotives, Lessor and Lessee shall enter into a purchase agreement prior to October 2, 1995, substantially in the form of the purchase agreement attached hereto as Appendix 3.

17.3 Notwithstanding anything to the contrary in this Lease, the parties hereto acknowledge that the right of Lessee to exercise its purchase option pursuant to this Section 17 is subject to the rights of the Agent in and to such Locomotives, including the rights of the Agent upon the occurrence of an event of default under the terms of the CSA.

17.4 In the event that Lessor does not fulfill its obligation to sell the Locomotives to Lessee on October 2, 1995, after Lessee has exercised its option to purchase such Locomotives in accordance with the provisions of Paragraph 17.1, then Lessee shall return such

Locomotives to Lessor with all improvements made by Lessee remaining in, on or attached to such Locomotives and Lessor shall pay to Lessee the reasonable costs of any such improvements which Lessee has made to such affected Locomotives. Upon such return, Lessee shall have no further obligation with respect to such Locomotives other than those already arising under the Lease prior to October 2, 1995.

18. Subject Headings.

The subject headings in this Lease have been placed herein for the convenience of the parties and shall not be considered in any question of interpretation or construction of the Lease.

19. Waiver.

The failure of either party to enforce at any time or for any period of time any provision of this Lease shall not be construed as a waiver of such provision or of the rights of such party thereafter to enforce such provision.

20. Notice.

All notices required or permitted hereunder shall be in writing and shall be deemed duly given by a party hereunder when personally delivered or transmitted by first class mail, postage prepaid, or by facsimile, to the other party at the following address:

To Lessor: The Atchison, Topeka and Santa Fe
 Railway Company
 1700 East Golf Road
 Schaumburg, Illinois 60173
 Attn: Vice President-Finance
 Fax No. (708) 995-6466

To Lessee: Burlington Northern Railroad Company
 1600 Continental Plaza
 777 Main Street
 Fort Worth, Texas 76102
 Attn: Vice President Network Design
 Fax No. (817) 333-2399

or to such other address as either party may hereafter designate in writing in accordance with this notice provision.

21. Execution in Counterparts.

This Lease may be executed simultaneously in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

22. Governing Law.

Except insofar as federal law may be applicable, the terms and conditions of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, but Lessor and any assignee thereof shall be entitled to such additional rights arising out of the filing or recording hereof, or of any assignment hereof, as shall be conferred by the laws of any jurisdiction in which the Lease or any assignment shall be filed or recorded.

23. Entire Agreement.

Except as otherwise specified herein, this Lease contains the entire and only agreement between the parties concerning the subject matter hereof, and there are merged herein all prior and collateral representations, promises or conditions in connection with the subject matter hereof, and any representation, promise or condition not incorporated herein and made a part hereof shall not be binding upon either party.


24. Amendments and Waivers.


Any provision of this Lease may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by both Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by duly authorized officers as of the date first above written.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

ATTEST:


Assistant Secretary

By: 
Its: Vice President and
Chief Mechanical Officer

BURLINGTON NORTHERN RAILROAD
COMPANY

By: W.D. Robinson

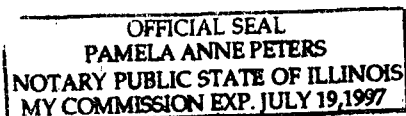
ATTEST:

Its: Vice-President - Network Design

Assistant Secretary

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 14th of October, 1994, before me personally appeared D.M. Sizemore, to me personally known, who being by me duly sworn, says that he is the Vice President and Chief Mechanical Officer of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing instrument was signed on behalf of said company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.



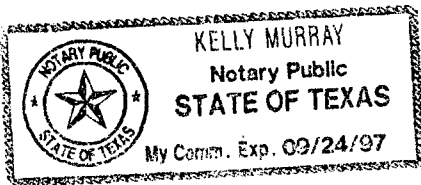
Pamela Anne Peters
Notary Public

(Notarial Seal)

My Commission expires: 7/19/97

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this 14th of October, 1994, before me personally appeared Herb D. Robinson, to me personally known, who being by me duly sworn, says that he is the Vice President Network Design of the Burlington Northern Railroad Company, that the foregoing instrument was signed on behalf of said company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.



Kelly Murray
Notary Public

(Notarial Seal)

My Commission expires: 9-24-97

APPENDIX 1

The following are 3000 horsepower diesel electric locomotives built by General Electric Company, model C-30-7, and they are all subject to the Conditional Sale Agreement dated as of March 1, 1980 (the "CSA") which CSA shall mature on October 2, 1995:

Road No.

8099
8100
8101
8103
8105
8110
8114
8118
8120
8122

APPENDIX 2

CERTIFICATE OF ACCEPTANCE

I, the duly authorized representative for the Burlington Northern Railroad Company (the "Lessee") under the Locomotive Lease and Option to Purchase Agreement dated as of October 14, 1994 (the "Lease"), do hereby certify that I have inspected and accepted delivery thereunder of the following Locomotives:

NUMBER OF LOCOMOTIVES:

ROAD NUMBER(S):

PLACE ACCEPTED:

DATE ACCEPTED:

I do further certify that the foregoing Locomotives conform to the specifications, requirements and standards applicable thereto as provided in the Lease.

Authorized Representative of Lessee

APPENDIX 3

Date _____, 1995

File: _____

Burlington Northern Railroad Company
1600 Continental Plaza
777 Main Street
Ft. Worth, TX 76102

Attention: Herb D. Robinson
Vice President Network Design

Please refer to the Locomotive Lease and Option to Purchase Agreement dated October 14, 1994 (the "Lease") between The Atchison, Topeka and Santa Fe Railway Company (hereinafter "Santa Fe") and Burlington Northern Railroad Company (hereinafter "Purchaser").

Upon receipt of your written acceptance hereof, Santa Fe agrees to sell to Purchaser with NO WARRANTIES EXPRESSED OR IMPLIED INCLUDING NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and on an "AS IS, WHERE IS" basis, upon the terms and conditions hereinafter stated, the following personal property (the "Property"):

Ten (10) each C30-7 Locomotives, Unit Numbers as follows:

8099	8100	8101	8103	8105
8110	8114	8118	8120	8122

The above Locomotive Units are sold at the option price of \$43,500.00 each with a total sale price of \$435,000.00. Tax Exempt Rolling Stock.

Payment terms are net cash upon receipt of invoice.

SPECIAL NOTE

Santa Fe hereby assigns its rights to sell the Property to its Qualified Intermediary, APEX Property & Track Exchange, Inc. All obligations remain with Santa Fe.

Checks must be made payable to:

Federated Services Company, Escrow Holder for APEX Property & Track Exchange, Inc.

Checks must be mailed to:

AT&SF Railway Company
Attention: Asset Disposition
PO Box 1674
Topeka, Kansas 66601-1674

Terms and Conditions

1. Purchaser is to remove all Santa Fe markings within thirty (30) days after delivery of the bill of sale substantially in the form set forth in Exhibit A attached hereto and is to provide Santa Fe with a letter stating that the markings have been removed and date of removal, accompanied by photographs.
2. Purchaser shall, within forty-eight (48) hours of delivery of each Locomotive, execute and deliver a certificate of acceptance substantially in the form set forth in Exhibit B attached hereto.
3. All risk of loss of the Property passes to Purchaser upon receipt of the bill of sale.

Purchaser's timely removal of the Property is of the essence and Purchaser must remove Property within thirty (30) days of notification. Any Property remaining after thirty (30) days shall be considered abandoned by Purchaser and may be disposed of by Santa Fe at Purchaser's expense and with no obligation by Santa Fe for any money Purchaser paid under this Agreement, or the proceeds from the disposition of the abandoned Property.

Purchaser shall assume all liability hereinafter stated.

Purchaser agrees to indemnify and save harmless Santa Fe for all judgments, awards, claims, demands and expenses (including attorneys' fees), including injury or death to all persons including both Purchaser's and Santa Fe's officers and employees, and for loss or damage to property belonging to any person, arising from Purchaser's acts or omissions or failure to perform any obligation hereunder arising on or after the purchase of the Property, except to the extent such judgments, awards, claims, demands or expenses are proximately caused by the gross negligence or willful misconduct of Santa Fe.

Purchaser shall indemnify, save harmless and assume the defense of Santa Fe from and against all claims, actions or legal proceedings arising from the violation or alleged violation of any laws, ordinances, orders or regulations by Purchaser arising on or after the purchase of the Property.

This Agreement and any documents attached hereto constitute the entire agreement of the parties. Any modifications to this Agreement shall be in writing and signed by both parties.

To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

Notwithstanding the terms, conditions or provisions of any Proposal, Rental Agreement Form, Custody Receipt or other written document which may be

executed by Santa Fe personnel pursuant to this Agreement, the terms and conditions in this Agreement shall control over any term, condition or provision in any Proposal, Rental Agreement Form, Custody Receipt or other written document. Notwithstanding the foregoing, the provisions of Paragraphs 17.3 and 17.4 of the Lease shall be incorporated herein and made a part of this Agreement.

Santa Fe will convey to Purchaser good and marketable title in and to each of the Locomotives, free and clear of any security interest, lien, encumbrance or charge of any kind (including without limitation, any security interest filed with the Interstate Commerce Commission) created or incurred by Santa Fe. Santa Fe has taken all steps necessary to perfect and protect its rights in and to the Property and has full right and power to sell, transfer and assign the Property without restriction.

This Agreement will be governed by the laws of the State of Kansas.

Please indicate your acceptance in the place provided on each of the two (2) letters returning each to the undersigned within five (5) days at AT&SF Railway Company, P.O. Box 1674, Topeka, Kansas 66601, Attention: Manager Asset Disposition.

Sincerely,

B. R. Hoffer
Assistant Vice President
Purchasing and Materials Management

By: _____
M. D. Wiens
Manager Asset Disposition
Phone (913) 435-5882

ACCEPTED this _____ day of _____, 1995

BURLINGTON NORTHERN RAILROAD COMPANY

By _____

Its: _____

EXHIBIT A

BILL OF SALE

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (herein called the "Company") in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer, and set over unto BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (herein called the "Purchaser"), its successors and assigns, pursuant to letter agreement dated _____, 1995 (the "Agreement"), between the Purchaser and the Company, the following items of railroad equipment (the "Units") which are owned by the Company:

<u>Quantity</u>	<u>Type</u>	<u>Unit Numbers</u>
10	3000 HP diesel electric locomotive, General Electric Company model C-30-7	8099, 8100, 8101 8103, 8105, 8110 8114, 8118, 8120 and 8122

To Have And To Hold such Units of Trust Equipment to the Purchaser, its successors and assigns, for its and their own use and benefit forever.

The Company hereby warrants to Purchaser and its successors and assigns, that at the time of delivery of such Units, the Company had legal title thereto and good and lawful right to sell such Units in the ordinary course of its business, and the Company conveyed good and marketable title to the Units free of all claims, liens, security interests and other encumbrances, and the Company covenants that it will defend the title to such Units against the demands of all persons whomsoever based on claims originating prior to the delivery of such Units by the Company.

IN WITNESS WHEREOF, the Company has caused this Bill of Sale to be executed in its name by a duly authorized officer, and the corporate seal to be hereunto affixed and duly attested as of this ____ day of October, 1995.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

(corporate seal)

Vice President-Finance

ATTEST:

Assistant Secretary

EXHIBIT B

CERTIFICATE OF ACCEPTANCE

I, _____, certify that I am the duly elected and qualified representative of Burlington Northern Railroad Company. I further certify that the locomotives identified below have been accepted by and delivered to Burlington Northern Railroad Company and are in the condition required by the terms of the letter agreement dated _____, 1995, by and between The Atchison, Topeka and Santa Fe Railway Company, as seller, and Burlington Northern Railroad Company, as purchaser.

Accepted Locomotives:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Executed this ____ day of _____, 1995

Burlington Northern Railroad Company

By _____

Its: _____